

February 25, 2005

**PINELANDS COMMISSION**

**Pinelands Comprehensive Management Plan  
Land Capability Map; Vegetation; Fort Dix Consumer Electronics  
Recycling Center Pilot Program**

**Adopted Amendments: 7:50-2.11, 5.3 and 6.27**

**Adopted New Rules: 7:50-10.28, 10.29 and 10.30**

Proposed: October 4, 2004 at 36 N.J.R. 4401(a)

Adopted: March 11, 2005 by the New Jersey Pinelands Commission,  
John C. Stokes, Executive Director

Filed: May 12, 2005 **with technical changes** not requiring additional public notice

Authorized by: New Jersey Pinelands Commission.

Authority: N.J.S.A. 13:18A-6j.

Effective Date: June 6, 2005

Expiration Date: Exempt.

**Summary** of Public Comments and Agency Responses:

The New Jersey Pinelands Commission (Commission) is adopting amendments to subchapters 2, Interpretations and Definitions, 5, Minimum Standards for Land Uses and Intensities, 6, Management Programs and Minimum Standards, and 10, Pilot Programs, of the Pinelands Comprehensive Management Plan (CMP). The amendments and new rules were proposed on October 4, 2004 at

36 N.J.R. 4401(a). The adopted amendments and new rules redesignate Pinelands management areas in Lacey, Ocean and Manchester Townships, adopt the State's official list of threatened and endangered plant species and establish a pilot program for consumer electronics recycling facilities.

In association with publication of the proposed amendments and new rules in the October 4, 2004 issue of the New Jersey Register, the Pinelands Commission transmitted the proposal to each Pinelands municipality and county, as well as to other interested parties, for review and comment. Additionally, the Pinelands Commission:

- Sent notice of the public hearing to all persons and organizations which subscribe to the Commission's public hearing registry;
- Placed advertisements of the public hearing in the five official newspapers of the Commission, as well as on the Commission's own web page;
- Submitted the proposed amendments and new rules to the Pinelands Municipal Council pursuant to N.J.S.A. 13:18A-7f;
- Distributed the proposed amendments to the news media maintaining a press office in the State House Complex;
- Published a copy of the proposed amendments and new rules on its web page at [www.nj.gov/pinelands](http://www.nj.gov/pinelands); and
  - Distributed two press releases concerning the proposed amendments and new rules to the news media

A formal public hearing was held before the Commission staff on November 18, 2004. Approximately 15 people attended the hearing; oral testimony on the rule proposal was provided by nine individuals.

Oral comments were recorded on magnetic tape which is on file at the Commission's office at 15 Springfield Road, New Lisbon, New Jersey. The record of this rulemaking is available for inspection in accordance with applicable law by contacting:

Betsy Piner  
Pinelands Commission  
P.O. Box 7  
New Lisbon, NJ 08064.

**Summary of Public Comments and Agency Responses:**

The Commission originally accepted written comments by regular mail, facsimile or e-mail on the October 4, 2004 proposal through December 3, 2004. In response to two requests from potentially affected property owners, the Commission subsequently authorized a 60-day extension of the public comment period (see 37 N.J.R. 172(a)). Written comments were then accepted through February 1, 2005.

The following persons submitted written comments (an asterisk indicates those persons who submitted oral comments as well):

1. Akers, Fred; Administrator, The Great Egg Harbor Watershed Association
2. Blair, June L.

3. Boyle, John F.
4. Brook, Chelsea M.
5. Campbell, Alphonse; Chairman, Waterford Township Environmental Commission
6. DiEugenio, David
7. Dighton, John
8. DuBrul, Andrew S.
9. DuBrul, Peter
- 10A. DuBrul, Patricia K.
- 10.B. DuBrul, Raoul S.
11. Federici, Antonio; President, The Native Plant Society of New Jersey, Office of Continuing Education, Cook College
12. Frazee, Steve\*
13. Gambino, Grace
14. Gordon, Ted; Pine Barrens Inventories
15. Greco, Ellie and Bill
16. Gross, Dr. Michael F.
17. Harkins, Joanne; New Jersey Builders Association
18. Heinrich, Adam R.; Rutgers Anthropology Department
19. Hetrich, Carol
20. Hughes, April
21. Jennings, Kerry; President, Forked River Mountains Coalition

22. Johnson, Carl
23. Klein, Herbert C.; Nowell Amoroso Klein Bierman, P.A.
24. Knipper, Teresa
25. LaBella, Joseph; President, Board of Trustees, Alliance for a Living Ocean,  
and Brown, Larrell R.; Issue Committee Chairperson
26. Larson, Jan; CMP Amendment Subcommittee, Pinelands Municipal  
Council
27. Leck, Mary Alessio; Professor of Biology, Emeritus, Rider University
28. Leighton, Elayne A.
29. Martineau, Geraldine
30. McGlinchey, Ed; Secretary, Pinelands Municipal Council
31. McKinley, Eric
32. Miceli, Donald F.; Carella, Byrne, Bain, Gilfillan, Cecchi, Stewart &  
Olstein
33. Miller, Marilyn
34. Montgomery, Carlton; Executive Director, Pinelands Preservation Alliance
35. Neuberger, Lois
36. Nogaki, Jane; Pesticide Program Coordinator, NJ Environmental  
Federation
37. Pavuk, Mark and Cherri
38. Pilling, Constance
39. Rasmussen, Renee

40. Roberts, Ronald; Pinelands Municipal Council Subcommittee Member;  
Chairman, Pemberton Township Environmental Commission
41. Sansone, Lorraine
42. Scagnelli, Joe and Renee
43. Schmierer, John
44. Spodofora, John R.
45. Underriner, Eric; Hill, Betts & Nash, LLP\*
46. Van Epps, John
47. Van Epps, Regina; Faculty Advisor, Student Environmental Organization,  
Atlantic Cape Community College
48. Windisch, Dr. Andrew G.
49. Yoskin, Neil; Bennett & Yoskin
50. Young, William; President, Young Environmental LLC

The following persons submitted oral comments only:

51. Beard, Marilyn
52. DeVito, Emile; New Jersey Conservation Foundation
53. Ebstel, Jeff; UNICOR
54. Euler, Nelson
55. Jage, Chris; New Jersey Conservation Foundation
56. Juleg, Russell; Pinelands Preservation Alliance
57. Mauro, Wayne

The Commission's response to the comments is set forth below.

*N.J.A.C. 7:50-5.3(a)24: Redesignation of lands in Lacey and Ocean Townships*

1. **COMMENT:** Support for the proposed amendments to the Land Capability Map relating to the redesignation of lands in Lacey and Ocean Townships was expressed by 43 parties, the majority of whom indicated that the amendments are warranted due to the ecological significance of the affected lands and the habitat they provide for rare and endangered species. (1, 2, 3, 4, 5, 6, 7, 8, 9, 10A, 10B, 11, 13, 14, 15, 16, 18, 19, 20, 21, 22, 24, 25, 27, 28, 29, 30, 31, 33, 34, 35, 36, 38, 39, 41, 42, 43, 46, 47, 48, 50, 51, 55)

**RESPONSE:** The Commission agrees with the assessment of these parties and appreciates their support.

2. **COMMENT:** One individual stated that the change from Rural Development Area to Forest Area will address the "imbalance" which occurs because no permits or Environmental Impact Assessments are required when existing forests in Pinelands Agricultural Production Areas are eliminated. (1)

**RESPONSE:** Under the CMP, agriculture is a permitted use in the Forest Area, just as it is in the Rural Development Area and the Agricultural Production Area. Existing forests in any of these Pinelands management areas may be cleared for agricultural purposes without the need for application to the Commission. While redesignation of an area from Rural Development to Forest will certainly reduce the overall amount of residential and commercial development that may

occur, it does not affect the ability of a property owner to establish an agricultural operation on lots which are currently forested.

3. **COMMENT:** Two parties suggested that the Commission should continue its subregional approach to resource protection and examine other watersheds in the Pinelands as they might also benefit from increased protection. (1, 34)

**RESPONSE:** In early 2003, the Commission concluded its periodic comprehensive review of the CMP. As part of a five-year strategy plan, the Commission decided to pursue subregional conservation plans as a means to better protect Pinelands resources and provide greater certainty in the permitting process in areas where natural resource values and development pressures conflict. The first such plan, involving the Toms River Corridor in Jackson and Manchester Townships, was completed in 2004 and culminated in the publication of a Regional Natural Resource Protection Plan which recommends zoning and management area changes, reductions in permitted densities and mandatory clustering of residential development as a means of better protecting water quality and critical wildlife habitat. Two other subregional planning projects are currently underway, one focusing on the Elwood Corridor in Atlantic County and the other on the Southern Medford/Evesham area in Burlington County. The Commission hopes to continue with and expand upon these efforts.

4. **COMMENT:** One party indicated support for the redesignation of land from Rural Development Area to Forest Area, stating that the intensity of permitted development in the Rural Development Area does not allow for



adequate protection of the natural resources in the area. This party stated that redesignation to Forest Area will give the Commission and municipalities the tools needed to ensure adequate resource protection. (34)

**RESPONSE:** The Commission agrees with the assessment of this commenter and will be working with the two affected municipalities to utilize the available land use tools in the most effective manner possible.

5. **COMMENT:** One party stated that the Commission should ensure there are no endangered species in the affected Lacey and Ocean Township area before development occurs. (15)

**RESPONSE:** No development may be carried out in the Pinelands unless it is designed to avoid irreversible adverse impacts on the survival of local populations of rare plants and animals (N.J.A.C. 7:50-6.27(a) and 6.33). The Commission will continue to apply these CMP standards in its review of development applications in the affected area.

6. **COMMENT:** Two parties objected to the fact that the Commission did not notify affected property owners of the proposed management area changes in Lacey and Ocean Townships. (32, 37)

**RESPONSE:** The CMP does not require that the Commission provide notice to individual property owners who might be affected by a proposed amendment, be it a proposed management area change, revision to an environmental standard or modification in procedural requirements. Rather, N.J.A.C. 7:50-7.4 of the CMP requires publication of any proposed amendments in

the New Jersey Register, posting of such amendments on the Commission's website, distribution of amendments to an established registry of interested persons and the news media, and submission of amendments to the Pinelands Municipal Council. The Commission complied with all of these requirements, and also provided copies of the proposed amendments to the clerks of all Pinelands municipalities and freeholder directors of the seven Pinelands counties. In addition, a public hearing on the proposed amendments was duly advertised in the five official newspapers of the Commission; notice of this hearing was posted on the Commission's website and mailed to all Pinelands counties, Pinelands municipalities and the those parties on the Commission's hearing registry. Furthermore, the amendments were discussed at several public meetings prior to their proposal by the Commission and the agendas of these meetings specifically listed the potential redesignation of the Lacey and Ocean Township lands as an item for discussion. The agendas of those meetings were likewise provided to all Pinelands municipalities and counties and posted on the Commission's website. Any property owner who called to indicate an interest in the potential redesignation was provided with information on the Commission's proposal, including the date and location of any public meetings on the matter as well as the means by which comments could be submitted. Commission staff also met with those affected property owners who requested an opportunity to do so.

While the Commission is not required to individually notify affected property owners, municipalities are charged by the Municipal Land Use Law with

that responsibility when considering certain ordinance amendments. As Lacey and Ocean Townships move forward to implement the management area change now being adopted by the Commission, additional opportunities for public review and input at both the municipal and Commission levels will be provided.

7. **COMMENT:** Three parties objected to the proposed redesignation of lands to the Forest Area on the basis that it will cause a financial hardship to property owners in the area. One of the parties indicated that investment value will be lost if properties in the area cannot be sold for development. A fourth party asserted that redesignation of the area from Rural Development to Forest would strip property owners of all value and therefore be an unconstitutional taking of property (12, 23, 37, 45)

**RESPONSE:** The rule proposal estimated a potential loss in value of \$1,700 per acre for those properties in Lacey and Ocean Townships with road access. The Commission is not privy to information on how much the affected property owners may have paid for their lots and so cannot comment on the extent to which this loss in value might constitute a financial hardship. In addition, until the two municipalities adopt implementing zoning plans for the area, it is impossible to predict what the exact outcome will be for any individual property owner. Some lands may be included in zoning districts with higher permitted densities than others. “Receiving” areas, within which residential development on one acre lots may occur, may be established in a portion of the affected area as part of a density transfer program. Ocean Township may elect to explore the use

of the State's new Transferable Development Rights legislation which could allow property owners in the affected area to sell their lands to developers seeking to build in that portion of the municipality outside the Pinelands Area. Finally, it must be noted that the mere fact that permitted density is being reduced does not represent an unconstitutional taking of property. Lands which were developable under the previous Rural Development Area designation will remain so under the new Forest Area designation, albeit it at a less intensive level or perhaps only through the protection of additional noncontiguous lands as part of a density transfer program.

8. **COMMENT:** Two parties suggested that property owners in the affected area should be compensated either through State purchase of their lands or through the allocation of credits for lost building rights. A third party stated that the Commission needs to do a better job of balancing its conservation objectives with the private property rights of affected landowners. (12, 54, 57)

**RESPONSE:** There is currently no mechanism in the CMP to allow for the allocation of Pinelands Development Credits to Pinelands Forest Areas; however, as was mentioned in the rule proposal, the Commission will shortly be evaluating the possibility. As mentioned above, the new state-wide TDR legislation may offer an additional opportunity for affected property owners to if Ocean Township were willing to structure a program which allows the transfer of density from the Pinelands Forest Area to a designated center across Route 9 and the Garden State Parkway in that portion of the municipality located outside the state-designated

Pinelands Area but within the Pinelands National Reserve. The Township has recently submitted a petition for plan endorsement to the State Planning Commission and Pinelands Commission staff have provided the Office of Smart Growth with information which could be used to design such a transfer program. The Commission agrees that acquisition efforts in the area are important and fully expects that the State and County will continue to have an active interest in purchasing properties in the area.

9. **COMMENT:** Three parties suggested specific land use or zoning recommendations for the affected area. One party requested that the current Rural Development Area designation be retained for that area within 2,000 feet of Route 532. Another party asked that the current Rural Development Area designation be retained for Block 34, Lot 10.03. A third party suggested that the Commission consider incorporating a grandfathering provision for affected properties. (12, 37, 51)

**RESPONSE:** The suggestions made by these commenters are among the many possibilities which will be explored when implementing zoning plans are developed by the two municipalities. It should be noted that the CMP already contains a grandfathering provision (see N.J.A.C. 7:50-5.31) which will continue to apply in the area following its redesignation to the Forest Area. This provision allows for residential development on existing lots of record which have been owned by the same person or a member of his or her immediate family since February of 1979, subject to certain conditions. Additional grandfathering

provisions may be considered depending upon the number and location of lots which might be impacted.

10. **COMMENT:** Four parties objected to the proposed redesignation on the basis that the change from Rural Development to Forest is unsupported by any environmental circumstances, the affected lands are not pristine forest, particularly those previously clearcut, and the existing landfill continues to represent a threat to groundwater. (23, 32, 44, 45)

**RESPONSE:** The Commission continues to believe that redesignation of the area to the Forest Area is appropriate and warranted based on the wealth of data provided in the Commission staff's March 2004 analysis. To quote, "The Oyster Creek watershed is minimally altered and contiguous to other extensive landscapes in the Preservation Area and Forest Area. The stream system displays water quality that is characteristic of central Pinelands, acid-water reference sites and generally supports native aquatic and wetlands communities. Numerous threatened and endangered plant and animal species records are reported for the watershed, which underscores the basin's status as an ecologically critical area. Although the possibility that the Southern Ocean Landfill may pose a future threat to water quality cannot be discounted, there is no evidence that the stream system is currently degraded. Furthermore, the presence of the landfill does not diminish the ecological value of a majority of the upland ecosystem in the watershed, which is similar to adjacent lands designated as Preservation Area and Forest Area.

Portions of Waretown Creek can also be characterized as minimally altered. This drainage represents an extension of the contiguous Oyster Creek watershed.”

11. **COMMENT:** One party objected to the redesignation on the basis that the Commission’s analysis was based on out of date, inappropriate or incomplete information about the area. For example, no systematic surveys for threatened and endangered species were done on any particular property. In addition, it was asserted that the Commission did not take into account paved roads, countless unpaved roads, abandoned rail lines, utility lines and existing development, all of which impact the area. Two other parties objected to the Commission’s characterization of the affected area as “undisturbed”, citing existing high tension power lines, gravel pits and the proximity of the Garden State Parkway (32, 44, 45)

**RESPONSE:** It is true that the Commission did not conduct its own threatened and endangered species surveys in the area but, rather, relied on known records obtained from the Natural Heritage Program, the Endangered and Nongame Species Program, its own staff and other reputable sources. The staff’s March 2004 report does not purport to have assessed individual properties but instead assigned each record to a discrete drainage unit so as to protect the confidentiality of the rare species records.

The fact that there are numerous unpaved roads, gravel pits, power line rights of way, etc. does not disqualify an area from being deemed to exhibit the essential character of the Pinelands. Other than a scattering of homes, the only

existing development of note in the area is Wells Mills Park and Ocean County Vocational Technical School. Certainly the presence of a county park should not lead to the conclusion that an area is no longer “undisturbed”. As for the school, it occupies such a small portion of the 4,100 acre area that its impact from a regional perspective is insignificant. The numerous aerial photographs submitted by one of the commenters only serve to emphasize the undeveloped nature of the area; they clearly indicate that the area represents a vast, largely forested intact landscape worthy of the enhanced protection offered by a Forest Area designation.

The Commission is satisfied that its analysis was accurate, appropriate and complete, providing more than a sufficient basis for the redesignation.

12. **COMMENT:** Two parties stated that Waretown Creek should not be redesignated to the Forest Area because the criteria used by the Commission to justify redesignation do not apply in this area as they do to Oyster Creek. These parties noted that one of the drainage units in the Waretown Creek has experienced a substantial increase in development and that 40 percent of the watershed is currently located in a Regional Growth Area. As such, it does not exhibit the essential character of the Pinelands. The commenters asserted that the Rural Development Area designation for at least one of the drainage units in the Waretown Creek should be maintained and that doing so would not adversely impact Oyster Creek (32, 44)

**RESPONSE:** With respect to threatened and endangered species, the commenters were correct in noting that the Commission staff’s analysis identified



no threatened or endangered species records within that portion of the Waretown Creek watershed in the Pinelands Area. East of the Garden State Parkway, however, the staff's analysis reported that Pine Barrens treefrogs (*Hyla andersonii*) were heard calling at three sites within one of the Waretown Creek drainage units in 1986 and, further, that the same species was reported to occur in this drainage unit in 1994. In those drainage units of the Oyster Creek which border the Waretown Creek watershed, again, the commenters are correct in stating that most of the threatened or endangered species reported are wetlands species. One, however, is a snake (the Northern pine snake, *Pituophis melanoleucus*) which is primarily an upland species.

The Commission staff's March 2004 analysis, on which the Commission largely based its decision to propose the redesignation, acknowledged that *portions* of the Waretown Creek watershed may be characterized as minimally altered. The Commission is aware that recent development has altered one of the drainage units in the Waretown Creek watershed and that downstream portions of the watershed, primarily east of the Garden State Parkway, are already impacted by development. However, except for conductance, which is likely related to the Garden State Parkway, the available water quality and biological data suggest that the downstream portion of the Waretown Creek watershed is in good condition. Given that the upstream portion of the watershed located in the Pinelands Area remains relatively undisturbed (it is highly doubtful that recent upland disturbances currently have an effect on the stream), it is valid to apply these results to the

entire watershed. From a regional planning perspective, it makes little sense to exclude an intact, largely undisturbed upstream part of a drainage basin from the Forest Area simply because the downstream portion on the other side of the Parkway is already impacted.

Ocean Township will be required to develop a revised zoning plan in response to change in management area designation for Oyster and Waretown Creeks. As part of that plan, it may be that those portions of the Waretown Creek watershed within which development has recently occurred would be one of the more appropriate areas in which to focus or cluster additional development.

13. **COMMENT:** Two parties objected to the redesignation on the basis that a change from Rural Development to Forest will mandate the use of septic systems and private wells in an area close to a contaminated landfill, posing a threat to health and safety. These parties suggested that the current Rural Development Area designation should be retained to allow for public water service so that the area may be better protected when forest fires occur. (32, 44)

**RESPONSE:** The CMP requires the use of septic systems for residential development in both the Rural Development Area and the Forest Area; sanitary sewer service is not permitted. In terms of water supply, the CMP does not mandate the use of private wells in any management area. Public water service is permitted in the Forest Area, just as it is in the Rural Development Area.

14. **COMMENT:** Two parties stated that the current Rural Development Area designation should be retained to serve as a buffer between adjacent residentially

developed lands in Barnegat's Regional Growth Area and undeveloped, forested areas in Ocean Township. Another party suggested that the current Rural Development Area designation should be retained because this Pinelands management area exists as a "safety valve" to provide areas for additional development when the adjacent growth areas are exhausted (32, 44, 45)

**RESPONSE:** These commenters have pointed out two of the traditional roles which Rural Development Areas have served in the Pinelands. This management area was generally defined to encompass transitional areas separating the less developed, forested areas of the Pinelands from growth areas, serving as both buffers and reserves for future development. Given that this particular Rural Development Area has been demonstrated to exhibit the essential character of the Pinelands, however, the Commission no longer believes it is appropriate for the Oyster and Waretown Creek watersheds to continue to serve these purposes.

15. **COMMENT:** Three parties stated that the change from Rural Development to Forest is unnecessary because municipalities have the ability to control density through zoning. These parties submitted that the CMP already contains environmental controls which establish reasonable buffers to wetlands and protect threatened and endangered species and the proposed redesignation provides no appreciable increase in resource protection. One of the parties stated that threatened and endangered species have prospered in the area during the last 20 years under the Rural Development Area designation and, thus, a change to Forest Area is not necessary. (32, 45, 54)

**RESPONSE:** In the Pinelands Area, municipalities have the ability to control density through zoning only to the extent that their decisions are consistent with both the CMP and the Municipal Land Use Law. The CMP allows municipalities to permit residential development in their Rural Development Areas at a maximum density of one unit per 3.2 acres of privately owned developable land. While wholly appropriate given the ecological sensitivity of the area, the Commission could not require the two municipalities to reduce this permitted density if the area were to remain in the Rural Development Area. Redesignation of the area from Rural Development to Forest will require both Lacey and Ocean Townships to design new zoning plans based on a maximum permitted density of one unit per 15.8 acres of privately owned developable land.

It is true that the minimum environmental standards contained in subchapter 6 of the CMP apply to development in the affected area no matter what its Pinelands management area designation. However, a Forest Area designation will mean fewer new homes in the area, thereby resulting in fewer and more manageable conflicts between proposed development and the protection of critical habitat for rare plants and animals.

Finally, if the commenter's assertion is true and threatened and endangered plants and animals have prospered in the area during the last 20 years, it seems safe to assume that this is due to the lack of development which has occurred. There is no guarantee that such a lack of development activity would continue if the area were to remain in the Rural Development Area.

16. **COMMENT:** One party stated that residential development potential in the Pinelands must be protected or growth pressures on protected areas will intensify. It was suggested that the CMP be amended to require the transfer of any lost development potential resulting from a management area redesignation to a growth area elsewhere in the Pinelands. (17)

**RESPONSE:** The Commission agrees that residential development potential must be maintained in appropriate areas within the Pinelands, particularly the Regional Growth Areas. The CMP explicitly recognizes the importance of this element of the Pinelands program and requires that municipal zoning plans provide opportunities for a certain amount of residential development in Regional Growth Areas. As the commenter is aware, the Commission is currently conducting an analysis of housing demand in the Pinelands and South Jersey as a whole to determine whether permitted densities in existing growth areas are sufficient to accommodate the projected demand for housing in the Pinelands. Upon the conclusion of this analysis, the Commission will determine whether adjustments in permitted densities are warranted and may also consider whether measures such as those suggested by the commenter are necessary to prevent the erosion of opportunities for residential development potential.

In the case at hand, the redesignation of lands in Lacey and Ocean from Rural Development to Forest is estimated to result in approximately 112 fewer homes within a 4,100-acre area. This loss of development potential is insignificant on a regional scale, representing less than one percent of the estimated residential

zoning capacity in all Pinelands Rural Development Areas. Therefore, the Commission does not believe any “transfer” is necessary.

17. **COMMENT:** One party asserted that redesignation of the area to the Forest Area will promote sprawl, discourage reasonable clustering, create a greater loss of trees and groundcover, increase impervious surface and runoff, provide less protection to critical habitat and be inconsistent with smart growth practices. (44)

**RESPONSE:** The Commission fully expects that redesignation of the area to the Forest Area will not only reduce the amount of disturbance which occurs but that it will also facilitate the protection of critical habitat. Clustered residential development will be encouraged and perhaps even required in all or portions of the affected area and opportunities for the establishment of a density transfer program will be fully explored. The Commission intends to work closely with Lacey and Ocean Townships to ensure that sprawl is discouraged. In any case, the projected reduction in development potential of 112 homes cannot reasonably be expected to result in the loss of more trees and groundcover, an increase in impervious surface and runoff or decreased protection to critical habitat.

18. **COMMENT:** One party stated that the mechanistic application of CMP criteria for designation of management areas does not constitute sound planning or advance smart growth principles. This party asserted that the CMP requires scattered development outside Regional Growth Areas and stated that although large-lot clustering is allowed, the CMP contains no functional provisions for creation of new compact settlements or centers in the Preservation Area District,

Forest Area or Rural Development Area, nor do the land use plans of Lacey and Ocean. This party also stated that the dispersed pattern of development required by the CMP will inevitably lead to fragmentation of natural landscapes. (49)

**RESPONSE:** The CMP does not require scattered development in any Pinelands management area. While it is true that the overall permitted densities in the Forest Area are quite low, opportunities for cluster development as well as the creation of higher density zoning districts in and around existing development remain. In addition, the establishment of sending and receiving areas as part of a density transfer program is feasible, potentially resulting in clusters of development on one acre lots. Also, the Commission will shortly be considering amendments to the CMP designed to enhance opportunities for cluster development and conservation site planning in general within Pinelands Forest Areas.

The creation of new “centers” in the most conservation-oriented areas of the Pinelands, the Preservation Area District and Forest Area, is not something the Commission believes is appropriate or consistent with the CMP, the goals of the Pinelands Protection Act or generally recognized smart growth principles. Existing Pinelands Villages located in and around these management areas are intended to function as centers and do provide opportunities for additional infill development. The CMP is an environmental protection plan with different goals and objectives than the State Plan, as it should given the unique resources of the Pinelands region which the Commission is charged with protecting.

19. **COMMENT:** One party stated that due to extent of publicly owned lands in the area and the effect of other restrictions, the Commission has overstated the potential residential development yield under the current Rural Development Area designation (49)

**RESPONSE:** The estimates of potential residential development yield presented in the rule proposal took into account the amount of land under public ownership in the area, as well as the presence of wetlands, the configuration of individual lots and the fact that much of the area has limited or no road access. While the ultimate yield of a specific parcel can obviously not be determined until a development application is filed and reviewed, the Commission is comfortable that its estimate of 204 homes under the current Rural Development Area designation was **reasonable**.

20. **COMMENT:** One party stated that the Commission has not addressed the implications of the redesignation for nonresidentially zoned lands in the affected area. Likewise, potential impacts on the future redevelopment of the landfill were not addressed (49)

**RESPONSE:** Opportunities for nonresidential development in the Forest Area are more limited than those in the Rural Development Area Nonresidential zones may still be designated, provided they include only lands in proximity to roadside retail sales and service establishments which existed in 1979. This is one of the issues which will be explored with the two affected municipalities when they begin the task of revising their master plans and land use ordinances to implement



the new Forest Area designation. Existing nonresidential uses in the area which may become nonconforming as a result of the redesignation, such as the Ocean County Vocational Technical School, may continue and perhaps even expand or change to other nonconforming uses pursuant to 7:50-5.2.

21. **COMMENT:** One party noted that a reduction in the number of permitted housing units is the sole rationale offered by the Commission for the redesignation; however, from a planning perspective, there is little difference between 675 houses under a Rural Development designation and 185 houses under a Forest designation, as either scenario will constitute sprawl (49)

**RESPONSE:** The Commission disagrees that the mere designation of an area as a Pinelands Forest Area means that sprawl will inevitably result. The CMP currently provides opportunities for cluster development which will be explored with the two municipalities, as will the establishment of density transfer programs to better direct and focus development in appropriate portions of the affected area. In addition, the Commission will shortly be proposing amendments to the CMP designed to encourage, and in some cases require, cluster development or more comprehensive conservation site planning within Pinelands Forest and Rural Development Areas in an effort to prevent scattered and piecemeal development.

22. **COMMENT:** One party stated that downzoning is not an effective tool for environmental protection or regional planning as it leads to large-lot residential development which is a poor alternative to compact development. This party suggested that the Commission should adopt amendments which would modify

zoning and management area designations to allow for a new community to be developed in an appropriate location while preserving truly sensitive lands elsewhere. (49)

**RESPONSE:** The Commission is not opposed to considering zoning and management area changes which would facilitate the development of new communities in appropriate locations. However, largely undisturbed, ecologically sensitive areas which exhibit the essential character of the Pinelands, such as the Oyster and Waretown Creek areas, do not constitute appropriate locations for such intensive development.

*N.J.A.C. 7:50-5.3(a)24: Redesignation of lands in Manchester Township*

**23. COMMENT:** Support for the proposed amendments to the Land Capability Map relating to the redesignation of lands in Manchester Township was expressed by four parties, two of whom expressed the opinion that because a settlement agreement had been executed, the proposed map changes needed to occur even though concern remained that too many units had been authorized. (19, 30, 31, 34)

**RESPONSE:** The Commission appreciates the support of these parties.

**24. COMMENT:** One party stated that the proposed management area changes and the prior settlement agreement between the Commission, the Department of Environmental Protection and Hovsons, Inc. allow too many homes

to be built in the area, putting a strain on the Kirkwood/Cohansey aquifer which could result in negative impacts on wetlands habitats and plants and animals. (14)

**RESPONSE:** The Commission understands the concerns expressed by the commenter but would point out that the settlement agreement provides for the deed restriction of 6,475 acres of land in Manchester and Berkeley Townships and the eventual donation of these lands to the State or a designated nonprofit organization, thereby ensuring their permanent preservation as open space. The lands to be protected are known habitat for rare plant and animal species.

*N.J.A.C. 7:50-6.27(a): Threatened and Endangered Plants*

25. **COMMENT:** Support for the proposed adoption of the State's Endangered Plant Species List at N.J.A.C. 7:50-6.27(a) was expressed by 37 parties. (2, 3, 4, 5, 6, 7, 8, 9, 10A, 10B, 11, 14, 16, 18, 19, 20, 24, 27, 28, 29, 30, 31, 34, 35, 36, 38, 39, 41, 42, 43, 46, 47, 48, 50, 51, 52, 56)

**RESPONSE:** The Commission appreciates the support of these parties.

26. **COMMENT:** Two parties stated that additional work should be done to protect other rare plants in the Pinelands which remain unlisted, namely those in the S2 and S3 categories. (14, 52)

**RESPONSE:** The Commission agrees that there may be additional plants in the S2 and S3 categories worthy of protection under the CMP. Once the necessary scientific and historic documentation has been compiled by the

Department of Environmental Protection, with the assistance of various non-profit organizations, the Commission may consider further amendments to the CMP.

27. **COMMENT:** One individual suggested that the Commission and the Department of Environmental Protection's Natural Heritage Program should develop a closer working relationship to evaluate the status of rare plants and devise ways to protect them (34)

**RESPONSE:** To the extent that the Commission has resources available, work will continue on this important project.

*N.J.A.C. 7:50-10, Part V: Fort Dix Consumer Electronics Recycling Pilot Program*

28. **COMMENT:** Support for the proposed Fort Dix Consumer Electronics Recycling Pilot Program being established at N.J.A.C. 7:50-10, Part V, was expressed by four parties, two of whom indicated that the pilot program should be adopted because recycling will keep the hazardous components of electronic devices out of the waste stream. (5, 29, 30, 51)

**RESPONSE:** The Commission agrees with the assessment of these parties and appreciates their support.

29. **COMMENT:** One party indicated that the existing recycling facility at Fort Dix should be held to highest standards with regular monitoring and inspections and should not be expanded to allow any other materials to be processed. (26)

**RESPONSE:** The pilot program contains specific restrictions on the types of materials the Fort Dix facility may accept. Expansion or modification of the facility is permitted only to facilitate the existing recycling functions of the facility, not to accept new types of materials. In addition, the pilot program requires annual inspections of the facility by the Department of Environmental Protection and the Commission. The Commission believes these provisions serve as sufficient safeguards.

30. **COMMENT:** Two parties stated that no additional consumer electronics recycling facilities should be allowed in the Pinelands. (26, 40)

**RESPONSE:** There is nothing in the pilot program now being adopted which authorizes additional consumer electronics recycling facilities or obligates the Commission to permit such facilities elsewhere in the Pinelands. That being said, it is possible that the Commission may determine, upon completion of the evaluation required pursuant to N.J.A.C. 7:50-10.30(b), that the success of the pilot program warrants an expansion in its applicability to allow for other such facilities to be sited in the Pinelands. Such a determination would require adoption of an amendment to the CMP.

#### **Summary of Agency-Initiated Changes:**

The Commission is making changes to N.J.A.C. 7:50-6.27(a) for purposes of updating the scientific names for ten threatened and endangered plants in the

Pinelands. These are changes in nomenclature only, with no change of substance involved.

### **Federal Standards Statement**

Section 502 of the National Parks and Recreation Act of 1978 (16 U.S.C. §471i) called upon the State of New Jersey to develop a comprehensive management plan for the Pinelands National Reserve. The original plan adopted in 1980 was subject to the approval of the United States Secretary of the Interior, as are all amendments to the plan.

The Federal Pinelands legislation sets forth rigorous goals which the plan must meet, including the protection, preservation and enhancement of the land and water resources of the Pinelands. The adopted amendments and new rules were designed to meet those goals by providing protection to the plant species on the State's Endangered Plant Species List, recognizing an area in Lacey and Ocean Townships which exhibits the essential character of the Pinelands, revising management area boundaries to facilitate both development and open space preservation under a recently executed settlement agreement and allowing for the continuation of one existing recycling facility under the terms of a new pilot program.

There are no other Federal requirements which apply to the subject matter of these amendments and new rules.

**Full text** of the adoption follows (additions to proposal indicated in boldface with asterisks **\*thus\***; deletions from proposal indicated in brackets with asterisks “\*[thus]\*”.):

**7:50-6.27      Development prohibited in the vicinity of threatened or endangered plants**

- (a) No development shall be carried out by any person unless it is designed to avoid irreversible adverse impacts on the survival of any local populations of those plants designated by the Department of Environmental Protection as endangered plant species pursuant to N.J.A.C 7:5C-5.1 as well as the following plants, which are hereby found and declared to be threatened or endangered plants of the Pinelands:
- 1.-2. (No change.)
  3. Silvery aster (**\*Symphyotrichum concolor, formerly\*** Aster concolor).
  4. Pickering’s morning glory (**\*Stylisma pickeringii var. pickeringii, formerly\*** Breweria pickeringii).
  - 5.-6. (No change.)
  7. Sickle-leaved golden aster (**\*Pityopsis falcata, formerly\*** Chrysopsis falcata).
  - 8.-10. (No change.)
  11. Rushfoil (**\*Croton willdenowii, formerly\*** Crotonopsis elliptica).
  - 12.-15. (No change.)

16. Yellow-fringed orchid (**\*Platanthera ciliaris, formerly\*** Habenaria ciliaris).
17. Crested yellow orchid (**\*Platanthera cristata, formerly\*** Habenaria cristata).
18. Southern yellow orchid (**\*Platanthera integra, formerly\*** Habenaria integra).
- 19.-32. (No change.)
33. Hirst's panic grass (**\*Dichanthelium hirstii, formerly\*** Panicum hirstii).
34. American mistletoe (Phoradendron **\*leucarpum, formerly P.\*** flavescens).
- 35.-53. (No change.)
54. Yellow-eyed grass (Xyris **\*caroliniana, formerly X.\*** flexuosa).